Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

CHARLES B. TAYLOR,

Petitioner,

vs.

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Second Circuit's opinion below conflicts with this Court's prior rulings on the applications of principles of tort law to causation issues in Section 1983 cases.

2. Whether the Court of Appeals for the Second Circuit's opinion below conflicts with this Court's prior rulings on causation in Section 1983 cases.

3. Whether the Court below misapplies its decision in *Jefferies v. Harlston*, 53 F.3d 9 (2nd Cir. 1997) in the instant case.

4. Whether the court below misapplied the standard of review of a denial of a motion for judgment as a matter of law.

PARTIES TO THE PROCEEDINGS

The party named in the caption, Ann Rooney, was the only party on appeal to the Court of Appeals for the Second Circuit. The action was dismissed against the other named defendants in the original action, Brentwood Union Free School District; Board of Education, Brentwood Union Free School District; Anthony Felicio, Ruth Rosenthal, Steven Coleman, Frank Cannon, Mary Reid, Owen McCaffrey, Jaime Suarez, in their capacities as members of the Board of Education, Brentwood Union Free School District; Frank Mauro, in his capacity as Superintendent of Schools, Brentwood Union Free School District; Dr. Rosemary Townley and Dr. Thomas Caramore, in their capacities as members of the Disciplinary Hearing Panel.

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Petitioner, Charles B. Taylor, respectfully requests that a writ of certiorari be issued to review the judgement of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 143 F.3d 679 (2nd Cir. 1998) (App. A). The judgment and order of the district court in *Taylor v. Brentwood Union Free School District, et al.*, is not published. (App. B).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Second Circuit entered its judgment in this case on May 6, 1998. (App. C). Petitioner sought rehearing and rehearing en banc. The petition for rehearing was denied on June 24, 1998 (App. D). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. XIV, § 1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

42 U.S.C. § 1983: Civil Action for Deprivation of Rights

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The fundamental question in this case is one of causation: whether Rooney, who was building principal in a school where Taylor, the petitioner taught, was the proximate cause of the constitutional deprivation of Taylor's equal protection rights under the Fourteenth Amendment, based on Taylor's race. To fully appreciate the significance of the issues presented by this case, it is essential to consider the operations of the New York State Education Law and the extensive factual record developed during the 21/2 week jury trial of this case.

A. Background of Taylor's Employment with the District Under the Supervision of Rooney.

In 1987, Rooney became the acting building principal for the South Middle School within the Brentwood Union Free School District, where Taylor, a Black male had been a technology teacher for over 15 years. (T-281: T-792). As

building principal, Rooney was responsible for overall operation of the school on a day to day basis.

Shortly after assuming the acting principal position, Rooney began to engage in a pattern of conduct of accusing Taylor of having either physically or verbally abused students. (E-63). Taylor was never afforded an opportunity to explain or respond to the allegations before Rooney would summarily conclude that he was guilty of whatever act or conduct of which he was accused by a disgruntled parent or a disruptive student. (E-63).

Although Rooney never formerly disciplined or reprimanded Taylor based on these allegations, she did issue him informal warnings which were not placed in his personnel file, copies of which were sent to Central Administration, the Superintendent of School's office and the Assistant Superintendent's office. (E-63; E-71; E-81; T-80-83). Taylor wrote rebuttals refuting every allegation against him. (E-67-70).

In December, 1991 Taylor was accosted in the classroom by a student with a history of violent behavior, as evidenced by numerous suspensions. (E-95; E-96; E-99-116).

In fact, two weeks before the incident with him, Taylor had sent Rooney a memo requesting that this student, Alex A. be removed for the technology class because his disruptive behavior was posing a safety threat in terms of the operation of the shop equipment. (E-94). There was no response from Rooney.

Also just prior to Taylor's incident with Alex, Alex had accosted and threatened another teacher, causing that teacher to notify Rooney that he feared for his safety based on Alex's

threats made to him and based on how he had to take necessary measures to restrain Alex. (T-246-248).

On the day in question, Alex was in Taylor's technology class and refused to follow a directive from Taylor. When Taylor approached him, Alex pulled him by the collar and took hold of Taylor's necktie and began choking him. Taylor, in an effort to attempt to breath and loosen Alex's hold on him, gently flipped Alex to the floor, at which time Alex's cousin grabbed him by the neck and pulled Alex off of Taylor. (T-1008-1045).

B. Rooney's Involvement in the Investigation of the Incident and in the Preferring of Charges Against Taylor.

Under the District's policy, Rooney, as the building principal had primary responsibility to report incidents of corporal punishment to the Superintendent of School's office in Central Administration. (T-610). As such Rooney was the person who made the initial determination as to whether there was an incident which warranted reporting it to Central Administration.

In the matter where Taylor was attacked by Alex, Rooney treated the incident from the very outset as grounds for building a case against Taylor: She had her assistant principal take photos of Alex's neck, to be used later. (T-1687).

Although there had been other incidents of students allegedly having sustained injuries in altercations with students, photos had never been taken before. (T-1722).

In a December 9, 1991 meeting with the teacher's union representative, Malossi, Rooney shared with him that she had pictures taken of the bruises on Alex's neck because she wanted

evidence of what had happened. (T-138-139). Malossi found this to be quite unusual, especially since Rooney had not witnessed the incident and did not know how the bruises may have gotten on Alex's neck. (T-139).

Rooney notified Central Administration of the incident and began to conduct her own investigation of the incident at the building level, deciding from which students she would take statements. (T [illegible]52). Rooney also determined which students Fascullo, from the Superintendent's Office would interview and she prepared those students for their meeting with Fasullo. (T-1640; 1644).

Rooney also testified that she had conversations and meetings with Fasullo from Central Administration, concerning the investigation of the Alex matter. (T-1654-16550).

Fasullo's testimony corroborates Rooney's indication of her involvement in the investigation of Taylor, and implicates her even further in terms of her providing him with copies of the student interviews she had conducted; providing him with the photos of Alex's bruises; and meeting with him concerning the investigation. (T-1852-1854). Fasullo also referred to an investigative memo he had where he made reference to having met with Rooney the day before he met with Taylor concerning the incident with Alex, at which time Rooney produced evidence which later was later used as the basis for considering the matter to be a case of corporal punishment, as opposed to it being a simple student control problem or a matter of self discipline. (E-236).

Fasullo also testified that Rooney had meetings with Central Administrator Welch concerning Taylor and the Alex incident. (T-1852). Former superintendent of Schools, Mauro, testified that Rooney attended meetings in Central

Administration concerning Taylor and the Alex matter. (T-539-540). Mauro also testified that among the factors considered in charging Taylor were the prior incidents, as reported by Rooney. (T-491-492).

As a result of Rooney's initial handling of the allegations against Taylor and the fact that she had previously warned him in an official memo that any future conduct where he had contact with a student would automatically be suspect and that he could touch a student for any reason, not even to protect himself or to protect another student, she played a critical role in the process which resulted in charges being preferred against him and a suspension being imposed. (E-81).

Both the superintendent and the Board of Education relied heavily on the investigation of Taylor as orchestrated by Rooney in the decision to prefer disciplinary charges against Taylor. Rooney was also a key witness at Taylor's disciplinary hearing. The hearing panel made specific reference to Rooney's involvement in its findings, stating that Taylor had previously been warned over the years by at least two principles, one of whom was Rooney. (E-167-168). Rooney also assisted in the preparation of the case before the disciplinary panel and in the preparation of the student witnesses.

Rooney was very much involved in the case before the disciplinary hearing panel. Much of what the panel considered either originated with Rooney or was reflective of her early and constant involvement in the case. In such a situation, it was not unreasonable for the panel to be influenced by the administrator's involvement and make a finding of guilt. Once the panel found Taylor guilty of the one charge concerning Alex, it recommended a penalty of a one year suspension without pay, which the Board of Education adopted.

C. Taylor's Equal Protection Claim

The rights of which Taylor claimed he was deprived are based on the violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, with respect to Rooney's application and enforcement of the Brentwood Union Free School District's corporal punishment policy, which lead to the preferring of charges against him and to his suspension for one year without pay.

Rooney was the precipitating force in the process, in that she deemed the incident to be a corporal punishment not a self defense matter and reported it to Central Administration. Rooney had previously engaged in a pattern of writing Taylor up based on unfounded allegations by disgruntled parents or recalcitrant students.

In comparison to other white teachers who were also supervised by Rooney, and who actually admitted verbal or physical abuse of students, Taylor was the only teacher ever suspended for a year without pay, based on an incident which was actually self defense. Following a 21/2 week jury trial, the jury returned a verdict in Taylor's favor, against Rooney, finding that she had violated his equal protection rights, by having treated him differently than similarly situated white teachers.

D. The Proceedings Below

Rooney appealed the money judgment entered against her based on the jury's verdict to the Second Circuit. The Second Circuit, stating that *Jeffries v. Harlston*, 52 F.3d 9 (2nd Cir. 1997) controlled, determined as a matter of law, that Rooney was not the proximate cause of Taylor's injury. The court below denied Taylor's petition for a rehearing.

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S RULINGS ON THE APPLICATION OF TORT LAW TO SECTION 1983 CASES.

Charles B. Taylor's petition for writ of certiorari should be granted because the opinion below conflicts with this Court's important prior rulings on the requirement of causation in Section 1983 cases. In setting forth the requisite element of causation, this court has mad it patently clear that principles of causation borrowed from tort law are relevant in civil rights actions brought under Section 1983. *Malley v. Briggs*, 475 U.S. 335, 344 n.7, 106 S. Ct. 1092, 1098 n.7, 89 L. Ed. 2d 271 (1986); *Monroe v. Pape*, 365 U.S. 167, 1887, S. Ct. 373, 384, 5 L. Ed. 2d 492 (1961). *See also Warner v. Orange County Dept. of Probation*, 115 F.3d 1068, 1071 (2nd Cir. 1997)

In *Malley, supra*, this Court reasoned, in applying the principles of causation from tort law that, tort defendants, including those sued under § 1983 are "responsible for the natural consequences of (their) actions." *supra*, 475 U.S. at 344, n.7, 106 S. Ct. at 1098, n.7, *quoting Monroe*, 365 U.S. at 187, 81 S. Ct. at 484.

This rationale has been applied to cases in the First and Second Circuits. In *Springer v. Seamen*, 821 F.2d 871 (1st Cir. 1987), the court held that an investigation and termination decision of a Black postal worker were not sufficiently independent of the individual defendants' discriminatory actions as to constitute superseding causes, *id.* 879. The First Circuit adopted the Ninth Circuit's proximate cause standard

in a Section 1983 case, as articulated in *Johnson v. Duffy*, 588 F.2d 740, 743-744 (9th Cir. 1978) as follows:

> A person "subjects" another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative act, or omits to perform an affirmative act which he is legally required to do which causes the deprivation of which the complaint is made. (Citation omitted). Moreover, personal participation is not the only predicate for section 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation, is also liable. The causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.

Applying this reasoning to *Springer, supra*, the Ninth Circuit concluded that where the plaintiff alleges that the defendant participated directly in the investigation and there exist questions of the personal involvement of the defendants, there are issues of fact for the jury. *Id.* 879. The Ninth Circuit further emphasized that the investigation was undertaken as a result of the individual's actions, the racially discriminatory character of which is a factual question for the jury. *Id.* 879.

The fact pattern in *Springer, supra*, is very similar to the fact pattern in the instant case: In *Springer, supra*, a Black, male postal worker was investigated and ultimately terminated based on a letter of complaint from white defendants. Springer alleged improprieties in the investigation and in the decision to terminate him, which the Ninth Circuit viewed as raising

issues of fact appropriate for determination by a jury and not a court on the issue of proximate cause.

Citing W. Prosser & W. Keeton, Prosser and Keeton on Torts 320 (5th ed. 1984), the Ninth Circuit in *Springer, supra*, noted that the question of proximate causation is sometimes for the jury, not the court, especially when it comes to the "substantial factor" determination. The issue of superseding cause and shifting responsibility was properly decided by the jury: The application of the legal cause standard to a particular case is a function ordinarily of the fact finder . . . if reasonable persons might differ, the legal cause issue is determined by the fact finder. *LeBoeuf v. Ramsey*, 503 F. Supp. 747, 758 (D. Mass. 1980), *rev'd in part on other grounds sub nom., Costa v. Markey*, 677 F.2d 158 (1st. Cir. 1982)

The court in *Springer, supra*, further rejected the argument that the investigation of Springer was independent and therefore constituted an intervening cause sufficient to supersede the individual defendants' actions. *Id.* p. 877. Citing the Restatement, the court in *Springer, supra*, at 877, stated that if

> the reasonable foreseeability of its being done . . . is a factor in determining whether the intervening act relieves the actor from liability for his antecedent (wrongful act), and under the undisputed facts there is room for reasonable difference of opinion as to whether such act was (wrongful) or unforeseeable, the question should be left to the jury. . . .

Restatement (Second) of Torts, 453 comments b and c (1965).

Similarly, in the Second Circuit, the court considered the reasonable foreseeability of intervening forces, including the actions of third parties, in this case a judge, to determine

whether the probation department would be liable for its recommendation that plaintiff attend A.A. classes which he claimed violated his First Amendment rights. *Warner v. Orange County Dep't. of Probation*, 115 F.3d 1068, 1071 (2nd Cir. 1997). While noting that a complex chain of events led to Warner's participation in religious activities at the A.A. meetings, including the judge's sentencing determination. Reaching the conclusion that the judge's intervening actions did not break the causal link between the actions of the probation department and the violation of Warner's constitutional rights, the Second Circuit relied upon this Court's analysis of causation in the Section 1983 case of *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986), where Section 1983 was interpreted as making defendants responsible for the natural consequences of (their) actions. *Id.* at 344 n.7, 106 S. Ct. at 1098 n.7 (*quoting Monroe*, 365 U.S. at 187, 81 S. Ct. at 484).

The Second Circuit in *Warner*, *supra*, framed the issue of causation in terms of whether it was reasonably foreseeable that the sentencing judge would adopt the probation department's recommendation and stated that this was a question of fact. *Id.* 1073.

Applying the same reasoning to the instant case, the issue of whether it was reasonably foreseeable that the Board of Education, and the hearing panel would adopt Rooney's conclusion that Taylor had violated the corporal punishment policy was a question of fact, and the jury determined that such subsequent actions were a foreseeable consequence of Rooney's actions.

Accordingly, the Second Circuit misapplied the tort law principles in this case with respect to proximate causation in this case with respect to proximate causation analysis and made

a significant departure from this Court's application of tort law principles to Section 1983 cases.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW MISAPPLIES THIS COURT'S PRIOR RULINGS ON CAUSATION.

Taylor's petition for writ of certiorari should be granted because the opinion of the court below misapplies this court's prior rulings on causation in Section 1983 cases.

The court below concluded that the

> Supreme Court consistently has refused to impose § 1983 liability upon defendants where the causal connection between their conduct and the constitutional injury is remote rather than direct

citing *Martinez v. California*, 444 U.S. 277, 285, 100 S. Ct. 553, 559, 62 L. Ed. 481 (1980) *Martinez*, *supra*, presented a number of factual situations which led this Court to conclude that ". . . (U)nder the circumstances of this parole decision, (the girl's) death is too remote a consequence of the parole officer's actions to hold them responsible under the federal civil rights law." *Id.*

Among the "circumstances" this Court considered in *Martinez*, *supra*, were the facts that the girl's life was taken five months after the parolee's release; that the parolee was in no sense an agent of the parole board; that the parole board was not aware that decedent, as distinguished from the public at large, faced any special danger. There is a glaring contrast between the facts of *Martinez* and the instant case in terms of

the foreseeability of the plaintiff and the injury. In *Martinez*, the decedent was not reasonably foreseen as being injured by the parolee; whereas in the instant case, Taylor was a foreseeable plaintiff, since he was expressly targeted by Rooney.

Another compelling contrast is the fact that the parolee was not an agent of the state: Rooney, on the other hand was an agent of the Brentwood Union Free School District, in her capacity as a principal at the South Middle School and was functioning in that capacity when she took action against Taylor, resulting in him being charged and suspended for one year without pay.

A final and dispositive distinction between *Martinez* and the instant case is the fact that this Court concluded that there was no deprivation of decedent's life within the meaning of the Fourteenth Amendment. On the other hand, the jury in Taylor's case did determine that there was a deprivation of his rights under the Equal Protection Clause of the Fourteenth Amendment.

Thus, the court below improperly applied this Court's analysis and holding in *Martinez, supra*.

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW MISAPPLIES ITS DECISION IN *JEFFRIES v. HARLSTON*, 53 F.2d 9 (2nd Cir. 1995) AND THIS COURT'S PER CURIAM DECISION IN *CITY OF SPRINGFIELD, MASSACHUSETTS v. KIBBE*, 480 U.S. 257, 107 S. Ct. 1114 (1987).

The petition should be granted because the opinion below misrelies on its decision in *Jeffries v. Harlston*, 53 F.3d 9 (2nd

Cir. 1995) where the court determined as a matter of law that the university defendants did not violate the First Amendment rights of Jeffries, a professor, by reducing his term as department chair because of a controversial speech, since they were motivated by reasonable prediction of disruption to the university operations. In reaching this decision, the Second Circuit analyzed a situation where there were 15 Trustees of the University named as defendants and it was determined that 9 of the 15 trustees voted to limit Jeffries' term as chair based on a reasonable expectation of harm, which served as superseding cause, breaking the causal chain between the tainted motives of the six others and the action limiting his term.

The Second Circuit, in reaching this decision in *Jeffries, supra*, noted that there was no evidence that any of the actions of the 6 trustees who were found to have acted with tainted motives, influenced or tainted the vote of the other 9 trustees. *Id.* 14. Thus, the court determined that the 9 trustees voted independently, based on their reasonable prediction of the disruption of the university operations. In the instant case, however, there was no conclusive proof that the Superintendent of Schools, the Board of Education and the Disciplinary Panel were not influenced by the actions of Rooney, who was the precipitation of the investigation of Taylor, the architect of the investigation, the preparer of student witnesses, a participant in Central Administration meetings in the superintendent's office concerning Taylor's fate and one of the primary witnesses at the disciplinary hearing.

By stating that its decision in the instant is controlled by Jeffries, the court below is overlooking the factual distinctions between the two cases in terms of the sphere of influence which Rooney operated in as compared to the 6 Harlston defendants. The court below, further overlooks the fact that in Jeffries there

was a determination that there was no violation of his constitutional right of free speech under the First Amendment, because under the court's application of this Court's decision in *Waters v. Churchill*, 511 U.S. 663, 114 S. Ct. 1878 (1994) it was determined that the 9 defendants acted based upon a reasonable prediction of disruption. Such is not the case here, where the jury did determine that plaintiff's equal protection rights were violated based upon him being treated differently than similarly situated white teachers supervised by Rooney, with respect to the application of the District's corporal punishment policy and with respect to the consequences of the application of that policy.

Specifically, the court below stated that section 1983 relief is only available if the plaintiff was deprived of federal rights. In *Jeffries*, the court determined there was no deprivation of his constitutional rights based on the application of *Waters v. Churchill* with respect to the reasonableness of the 9 defendants' actions. This analysis does not lend itself to Taylor's claim of violation of his equal protection rights under the Fourteenth Amendment based on differential treatment on account of his race. Here, the jury did determine that Taylor was deprived of a constitutional right. The next line of inquiry is whether Rooney was the proximate cause of the Taylor's constitutional deprivation. By applying the Jeffries rationale, as a matter of law, the court below failed to even consider the line of cases which acknowledge that a defendant can be held liable for the consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties. *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989); *Warner v. Orange County Dept. of Probation*, *supra*.

It is noteworthy that this court in *Jeffries* cited *Gutierrez-Rodriguez*, *supra*, for the proposition that superseding causes relieve defendants of section 1983 liability. *Jeffries*, *supra* 14.

However, it is the determination as to what constitutes a "superseding cause" and what constitutes a "consequence attributable to reasonably foreseeable intervening forces, including the acts of third parties" which is determinative on the issue of section 1983 liability. In Jeffries, the fact that the court below concluded that there was influence of the 9 trustees by the 6 trustees allowed it to conclude that there was a break in the causal connection. In the instant case however, the rationale of Gutierrez-Rodriquez applies, as stated and relied upon by that court in *Marshall v. Perez Artuaga*, 828 F.2d 845, 848 (1st Cir. 1987), *cert denied*, 108 S. Ct. 1027, where the court said that an actor is responsible for: those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties. (Cite omitted).

The court below also misapplies the reasoning of *City of Springfield v. Kibbe*, 480 U.S. 257, 269, 107 S. Ct. 1114, 1120-1121, 94 L. Ed. 2d 293 (1987) (per curiam) by suggesting that causation is only a statutory application rather than an application of common tort law. The Court's dissent went on to note that analogy to traditional tort principles, however, shows that the law has been willing to trace more distant causation when there is a cognitive component to the defendant's fault than when the defendant's conduct results from simple or heightened negligence. There clearly is a cognitive component to Rooney's actions and their far reaching, foreseeable implications as to warrant the tracing of more distant causation *i.e.* Rooney's actions, in examining Taylor's equal protection claim under Section 1983.

Thus, the court below, by automatically applying the Jeffries rationale, and concluding as a matter of law that Rooney was not the proximate cause of Taylor's constitutional deprivation of his equal protection rights, erred in its application of Jeffries.

IV.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS BASED ON THE COURT'S FAILURE TO APPLY THE APPLICABLE STANDARD FOR REVIEW OF A DENIAL OF A MOTION FOR JUDGMENT AS A MATTER OF LAW.

The petition should be granted because the court below failed to apply the applicable standard for review of a denial of a motion for judgment as a matter of law. In reaching its decision to reverse the judgment entered by the Eastern District Court of New York, Spatt, J., the court below concluded that Rooney is entitled to judgment as a matter of law in that no jury could have found that she was the proximate cause of Taylor's constitutional deprivation. The court, in reaching this conclusion, stated that it was guided by the standard governing motions judgment as a matter of law ("JMOL") pursuant to Fed. R. Civ. P. 50, as enunciated in the decisional law of the Second Circuit.

In applying this standard, the court below placed undue emphasis on the sufficiency element of the evidence with respect to JMOL, relying on *Sir Speedy, Inc., v. L&P Graphics, Inc.*, 957 F.2d 1033, 1039 (2nd Cir. 1992) for the principle that JMOL may not be properly granted unless the evidence, viewed in the light most favorable to the non-moving party, is insufficient to permit a reasonable juror to find in that party's favor. However, the court below, in *Sir Speedy, Inc., supra*, p. 1039, citing *Simblest v. Maynard*, 427 F.2d 1, 4 (1970) actually discussed the standard as requiring the court to deny the JMOL unless, viewed in the light most favorable to the non-moving party, the evidence is such that, without weighing the credibility of witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached.

Similarly, the court below, misstates the standard of review in *Samuels v. Air Trans. Local 504*, 992 F.2d 12 (2nd Cir. 1993), concluding that the evidence must be insufficient to permit a reasonable juror to find in the non-moving party's favor. *Id.* p. 14. This is actually an oversimplification of the standard the Second Circuit followed in *Sir Speedy, Inc., supra* and applied in *Samuels, supra* when it concluded that "However thin the evidence, it was not such that a reasonable jury could reach only one conclusion."

Thus, there is clear authority in this circuit, from which the court below deviated in examining the sufficiency of the evidence in terms of the certainty of the outcome in the mind of a reasonable juror: If it is not certain that a reasonable juror could reach only one conclusion, in favor of the moving party, there is no grounds for JMOL.

This is the appropriate standard by which the court below should have examined the evidence in this case below, to determine whether the record clearly supported a finding that a reasonable juror could reach only one conclusion that Rooney was not the proximate cause of the deprivation of Taylor's constitutional rights under the equal protection clause of the Fourteenth Amendment.

As previously set forth herein, most of the circuit courts and this Court have agreed that the issue of causation can be a factual determination, especially when it comes to determining whether the defendant's conduct was the precipitating action from which the acts of a third party would reasonably flow. *See Martinez v. State of California*, 444 U.S. 277, 100 S. Ct. 553 (1980); *Springer v. Seamen*, 821 F.2d 871 (1st Cir. 1987); *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989); *Warner v. Orange County Department of Probation*, 115 F.3d 1068 (2nd Cir. 1997).

Accordingly, the petition must be granted to resolve the issue of the appropriate standard of review in a section 1983 case on the issue of causation.

CONCLUSION

This case presents important questions which must be resolved in terms of causation issues in equal protection cases brought under section 1983. The court below has misapplied and misconstrued this Court's rulings on this issue and is also inconsistent with he rulings of other circuits courts on this issue. By granting Taylor's petition for certiorari, however, this Court can correct the Second Circuit's decision on the issue of causation in section 1983 cases. By granting this petition, the Court will also clarify the standard of review of a denial of a judgment as a matter of law.

Accordingly, Charles B. Taylor respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDED MAY 6, 1998

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 1997

(Argued: December 8, 1997 Decided: May 6, 1998)

Docket No. 97-7481

CHARLES B. TAYLOR,

Plaintiff-Appellee,

—v.—

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, in his capacity as a member of the Board of Education, Brentwood UFSD; RUTH ROSENTHAL, in her capacity as a member of the Board of Education, Brentwood UFSD; STEVEN COLEMAN, in his capacity as a member of the Board of Education, Brentwood UFSD; FRANK CANNON, in his capacity as a member of the Board of Education, Brentwood UFSD; MARY REID, in her capacity as a member of the Board of Education, Brentwood UFSD; OWEN MCCAFFREY, in his capacity as a member of the Board of Education, Brentwood UFSD; JAIME SUAREZ, in his capacity as a member of the Board of Education, Brentwood UFSD; FRANK MAURO, in his capacity as Superintendent of Schools, Brentwood UFSD; ROSEMARY TOWNLEY, DR., in her capacity as a member of the Disciplinary Hearing Panel;

Appendix A

THOMAS CARAMORE, DR., in his capacity as a member of the Disciplinary Hearing Panel,

Defendants,

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Defendant-Appellant.

Before:

MINER, PARKER and WOOD*,

Circuit Judges.

Appeal from a money judgment entered in the United States District Court for the Eastern District of New York (Spatt, J.) upon a jury verdict for plaintiff teacher on his § 1983 claim against defendant school principal for damages arising from his one-year suspension from teaching for the use of excessive force, the plaintiff having alleged that he was denied his right to equal protection on the basis of race.

Reversed.

HARRIET A. GILLIAM, Aquebogue, NY, *for Plaintiff-Appellee.*

ROBERT J. CIOVACCO, Certilman Balin Adler & Hyman, LLP, East Meadow, NY (Jeannine A.

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* The Honorable Harlington Wood, Jr., of the United States Court of Appeals for the Seventh Circuit, sitting by designation.

Broomhall, Neil H. Angel, of counsel), *for Defendant-Appellant.*

MINER, *Circuit Judge*:

Defendant-appellant Anne E. Rooney appeals from a money judgment entered in favor of plaintiff-appellee Charles B. Taylor in the United States District Court for the Eastern District of New York (Spatt, J.), following a jury trial. Taylor prevailed on his claim, brought pursuant to 42 U.S.C. § 1983, that his one-year suspension from teaching constituted race discrimination violative of his equal protection rights under the Fourteenth Amendment of the Constitution. At the time of his suspension, Taylor was a tenured teacher at Brentwood South Middle School ("South") in Brentwood, New York, where Rooney served as acting principal. Rooney advances the following contentions on appeal: (1) she was entitled to judgment as a matter of law because her actions were not the proximate cause of any injury sustained by Taylor; (2) she was entitled either to absolute immunity or qualified immunity from liability because she acted pursuant to her official duty to report complaints regarding the use of corporal punishment by teachers at her school; (3) the district court erred in submitting to the jury the issue of whether other school teachers and Taylor were similarly situated, since that issue was clear as a matter of law; (4) the principle of collateral estoppel prevented Taylor from relitigating, subsequent to the decision of the disciplinary hearing panel, the issue of whether he was treated differently from similarly situated Caucasian teachers; (5) the district court erroneously admitted evidence relating to certain allegedly discriminatory statements made by Rooney; (6)

the court improperly instructed the jury, both in its charge as well as in its special interrogatories, that intent to inhibit Taylor's right of free speech could serve as the basis for his § 1983 claim when his First Amendment claim had already been dismissed; and (7) the court abused its discretion in calculating the attorney's fees award in this case.

For the reasons that follow, we reverse the judgment of the district court and remand with instructions to enter judgment for Rooney.

BACKGROUND

Defendant-appellant Anne E. Rooney was appointed acting principal of South in September of 1987 and served in that capacity at all times relevant to this appeal. Plaintiff-appellee Charles B. Taylor, who is African-American, was employed as a teacher of technology and industrial arts at South since September of 1971. Taylor had a history of physical confrontations with students at South, beginning in 1976 and occurring throughout the administrations of three different South principals. Taylor's personnel file, for example, is replete with correspondence written by various administrators that describe the altercations, set forth Board of Education Policy 5131[1] (the "Corporal Punishment Policy" or

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[1] Board of Education Policy 5131 provides, in pertinent part, that:

> Corporal punishment is not an effective means of developing self-discipline. The [Brentwood Union Free School] District will not condone or accept the use of physical force (corporal punishment) upon a pupil for the purpose of punishing that pupil.
>
> Reasonable physical force used for the following purposes is not to be misconstrued as corporal punishment:
>
> (1) to protect oneself form physical injury;
>
> (2) to protect another pupil or teacher or any other person from physical injury;
>
> (3) to protect the property of the school or of others;

(footnote continued)

"Policy 5131") of the Brentwood Union Free School District (the "District"), and caution Taylor against violating such policy. The record indicates that Taylor had been reminded of the Corporal Punishment Policy repeatedly over a fifteen-year period and that he had received several reprimands regarding the manner in which he disciplined students. Taylor has denied in whole or in part each of the allegations of improper conduct.

Upon receipt of a complaint of either a parent or student, principals at each school within the District are required to report to Michael Fasullo, Director of Employee Relations and Planning in the District, any incidents that involve the use of physical force on a student by a teacher. Specifically, Fasullo testified that every year principals are reminded that whenever they receive a complaint from a student or parent regarding corporal punishment, they "are required to contact Central Administration."[2] Fasullo further testified that a principal typically will place a phone call to him regarding an incident and then follow up with written information. The decision of whether to report such an incident is not left to the discretion of the principals, and principals are not free merely to attempt to resolve the matter at the building level when a complaint has been made.

Fasullo used the information provided by the principals to prepare reports regarding the use of corporal punishment at schools throughout the District. Such reports must be submitted to the Commissioner of Education of the State of New

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(4) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.

[2] Although not specifically defined by the parties in their briefs, the term "Central Administration" appears to refer to the various administrators who are employed by the District.

York (the "Commissioner") on a semi-annual basis.[3] In addition to using the data supplied by local school authorities to prepare semiannual reports, District administrators used the information to determine whether to conduct an investigation into the incidents underlying the complaints.

The record indicates that Rooney fully complied with her duty to report complaints regarding the use of corporal punishment by teachers working in her school. For example, after receiving complaints that Taylor had used excessive force in disciplining students Rudy P.[4] and Alexis A., Rooney telephoned District administrators and subsequently sent them copies of her correspondence with Taylor relating to the events. For example, on May 23, 1989, Rooney sent a memorandum to Taylor recounting the incident involving Rudy P., which occurred on that day. A copy of this memo was sent to District officials Welch and Black. After the incident involving Alexis A., Rooney asked Assistant Principal Ithiel Lloyd to take photographs of the injured child's neck. Rooney testified that she sent the photographs either to Fasullo or to Michael T. Welch, the District's Director of Secondary Education.

Fasullo's report for the six-month period commencing on January 1, 1989 and ending on June 30, 1989 states that there

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3 In every school district, the board of education or its equivalent is required to submit to the Commissioner the following:

> a semiannual report . . . , by January 15th and July 15th of each year . . . setting forth the substance of each complaint about the use of corporal punishment received by local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case.

N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(l)(3)(ii).

4 To protect the identities of the children involved, we follow the lead of the district court and do not use the full names of the various children. *See Taylor v. Brentwood Union Free School Dist.*, 908 F. Supp. 1165, 1170 (E.D.N.Y. 1995).

was an ongoing investigation into a complaint made on May 23, 1989. This complaint was made by the mother of Rudy P. and concerned the physical confrontation between Taylor and Rudy P. that occurred on May 8, 1989. Fasullo's report for the period of July 1, 1991 through December 31, 1991 notes a complaint made on December 5, 1991, concerning the incident between Taylor and Alexis A. that occurred on the same day.

In the cases of Rudy P. and Alexis A., District officials decided that further investigation was warranted. Accordingly, the District fully and independently investigated the events of May 8, 1989 and December 5, 1991. Fasullo was charged with conducting the investigations. He testified that his investigation of the incident involving Rudy P. was undertaken in three stages. First, he reviewed with members of South's administration the existing reports and documentation relating to the incident. Second, he met with Taylor and representatives from his union to obtain a review of the event from Taylor's perspective. Finally, Fasullo interviewed various students who witnessed the event. Fasullo's subsequent investigation of the incident involving Alexis A. proceeded in much the same way.

Taylor was provided an opportunity to present his own version of the incidents involving the two students. On June 28, 1989, a meeting was held at the District's offices that included a discussion of the incident involving Rudy P. Associate Superintendent Les Black, Fasullo, Welch, Taylor and Taylor's attorney, Joseph Fritz, attended the meeting. At a meeting held at the District's offices on December 11, 1991, the confrontation between Taylor and Alexis A. was discussed.

Subsequent to Fasullo's investigation of the incident involving Rudy P., Superintendent Mauro first decided not to

take disciplinary action against Taylor. However, after Fasullo submitted a report and recommendation that detailed his investigation of the December 5th incident involving Alexis A. and recommended that charges be filed pursuant to N.Y. Educ. Law § 3020-a (McKinney 1993), the Superintendent concluded that disciplinary charges should be preferred against Taylor in connection with both incidents. The record indicates that Rooney made no recommendation to District officials or anyone else regarding whether charges should be filed against Taylor. In fact, other than complying with her duty to report all complaints regarding the use of physical force on students, the record indicates that Rooney had absolutely no input into whether the Superintendent would seek discipline for Taylor. Rooney testified at trial that she neither requested nor recommended that charges be brought and that at no time was she consulted about the issue by District administrators. Taylor has presented no evidence to refute her testimony.

Even though the Superintendent decided to seek discipline for Taylor, charges could not be brought against the teacher without the approval of a majority of the seven-member Board of Education (the "Board"). Accordingly, a meeting of the members of the Board was scheduled, and the Board members were briefed by Associate Superintendent Black on the incidents in which Taylor was involved. After posing various questions to Black about the incidents, a majority of the members of the Board agreed that there was probable cause to conclude that Taylor had acted improperly. Accordingly, the Board approved the filing of three charges against Taylor.

The Superintendent filed the charges, pursuant to § 3020-a, on January 16, 1992 and sought Taylor's dismissal, the maximum penalty available. The charges included two charges of misconduct and conduct unbecoming a teacher, and a third charge of insubordination. The first charge

alleged that Taylor had used excessive force in disciplining Rudy P., resulting in bruising of the student's arm and neck. The second charge alleged that Taylor had used excessive force in disciplining Alexis A., resulting in bruising of that student's neck. The third charge alleged that Taylor had disregarded prior oral and written directions from the administration at South regarding his improper use of physical force in disciplining students. Pursuant to § 3020-a, Taylor requested a hearing before a three-member panel.

The disciplinary hearing panel convened for hearings on eight separate occasions between April and October of 1992. At the hearings, the District produced eight witnesses: students Santos S., Alexis A., Rudy P. and Anthony S., Assistant Principal Lloyd, Acting Principal Rooney, Associate Superintendent Black, and Director of Employee Relations and Planning Fasullo. Taylor produced six witnesses: Cartez Johnson, Joseph Basso and Nancy Vasquez, each a teacher at South, student Michael N., Black and Fasullo. Taylor also testified on his own behalf.

With respect to the second charge, Alexis A. testified about the events that occurred on December 5, 1991 after he began experiencing chest pains and then stood up near his desk in Taylor's classroom. The following is a summary of his testimony that appears in the decision of the disciplinary hearing panel:

> [Taylor] came over to him and told him to sit down and, in a hard manner touched his chest with one of his hands. Alexis told [Taylor] that he was hurting him and pushed [Taylor's] hand away with his own . . . . [Taylor then] grabbed the front of his sweater with both hands and threw his[sic] to the floor over his extended leg. [Taylor] then grabbed Alexis by the hand with both hands and pushed him against the wall. Alexis was wear-

> ing rosary beads around his neck at the time. He tried to grab [Taylor] by his tie . . . . Alexis [then proceeded] to the office of Assistant Principal Lloyd, where pictures were taken of his neck.

Santos S. was an eyewitness to the events that took place on December 5th. He corroborated Alexis' version of events. According to Santos, "Taylor told Alexis to sit down and when he refused to do so, Taylor put his hand on Alexis' shoulder. Alexis then pushed Taylor's hand away, upon which Taylor threw Alexis on the floor by grabbing him by the neck and throwing him over his leg." Lloyd testified that Alexis was emotionally upset when he and Santos arrived at Lloyd's office shortly after the altercation and that there were marks on Alexis' neck. Rooney testified that she also saw "welts" on Alexis' neck after the incident in Taylor's classroom and that she directed Lloyd to photograph the child's neck. Additionally, she testified that she had referred Taylor to Policy 5131 on various occasions between 1987 and 1989 and that she had warned him that he was not to use excessive force against students.

Black testified that he had met with Taylor on a number of occasions in his current capacity as associate superintendent of schools and in his previous capacity as director of elementary education, each time warning Taylor not to use improper physical force on students. For example, Black stated that he had warned Taylor and his attorney, at the meeting held on June 28, 1989, that violations of the District's Corporal Punishment Policy might lead to the holding of a disciplinary proceeding.

With respect to the first charge, Rudy P. testified that Taylor had placed him in a headlock on May 8, 1989 and that, as a result of the incident, he had sustained scratches on his arm and a red mark on his neck. Rudy P. also testified that he had

sustained a bruise on his head when Taylor pushed him into a classroom, causing him to bump his head on the frame of a door. Anthony S. testified that he saw Taylor holding Rudy P. in a headlock and observed redness on Rudy's forehead.

The panel dismissed the charges regarding the May 8th incident, having concluded that such charges had not been proven by a preponderance of the evidence. Conversely, the panel determined that the second charge, relating to the December 5th incident, had been proven by a preponderance of the evidence. Specifically, it found that Taylor had used excessive force in disciplining Alexis A. The panel considered significant the fact that Taylor denied that he had flipped Alexis A. over his leg during the December 5th incident, despite extensive testimony to the contrary. According to the written decision of the panel, "This fact was most compelling in light of the testimony of both the Board witnesses to the incident, and [Taylor's] own witness, Michael, who testified . . . [that] Mr. Taylor flipped [Alexis]."[5]

Accordingly, while it deemed the penalty of termination excessive, the panel voted in favor of a one-year suspension without pay. After a meeting held on December 19, 1993, the District implemented the decision of the disciplinary hearing panel. Taylor was suspended from January 22, 1993 through January 22, 1994. Taylor appealed the panel's decision, pursuant to N.Y. Educ. Law § 3020-a, to the Commissioner. In a comprehensive written decision, Commissioner Thomas Sobol dismissed Taylor's appeal, having concluded that there was no basis upon which to reverse the decision of the disciplinary hearing panel.

On January 17, 1995, Taylor filed a complaint in federal district court alleging, *inter alia*, that he was singled out for

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[5] The written decision of the panel did not contain any disposition of the insubordination charge.

disciplinary action by the District, by the Board, by Anthony Felico, Ruth Rosenthal, Steven Coleman, Frank Cannon, Mary Reid, Owen McCaffrey, Jaime Suarez, individual members of the Board, by Superintendent Mauro, by Drs. Rosemary Townley and Thomas Caramore, individual members of the disciplinary hearing panel, and by Rooney because of his race and open criticism of their treatment of minority teachers. *See Taylor v. Brentwood Union Free School Dist.*, 908 F. Supp. 1165, 1169 (E.D.N.Y. 1995). Plaintiff sued under 42 U.S.C. §§ 1983 and 1985(3), alleging that his equal protection rights under the Fourteenth Amendment and his free speech rights under the First Amendment had been violated as a result of his suspension, and that his suspension was illegal under N.Y. Exec. Law § 290 *et seq.*, because it occurred on account of his race.

Prior to trial, the court ruled on two motions to dismiss. *See id.* at 1172. The first motion was made by defendants Caramore and Townley, the two members of the disciplinary hearing panel who voted in favor of disciplinary action. *See id.* Caramore and Townley argued, *inter alia*, that they were shielded from liability on the ground of absolute immunity. *See id.* The district court agreed and dismissed the complaint against these two defendants. *See id.* at 1175. The remaining defendants moved to dismiss the state law claims and the constitutional claims, pursuant to Fed. R. Civ. P. 12(b)(6). *See id.* at 1172. The district court dismissed the state law claims, having concluded that they were time barred, but declined to dismiss the constitutional claims. *See id.* at 1176-77.

The case went to trial before Judge Spatt on October 15, 1996. At the close of the plaintiff's case, the defendants moved, pursuant to Fed. R. Civ. P. 50(a), for dismissal of each of the claims alleging violations of Taylor's constitutional rights. The court dismissed the First Amendment

claims on the ground that speech of public concern was not demonstrated. The court reserved decision on the motion to dismiss the equal protection claims. Ultimately, the sole issue presented to the jury was whether Taylor was treated differently from various Caucasian teachers who were similarly situated.

On November 7, 1996, the jury returned a verdict in favor of the plaintiff only against Rooney. The verdict, rendered in answers to special interrogatories, awarded Taylor $67,412.00 for back-pay, $5,143.80 for loss of medical insurance benefits, and $61,249.60 for loss of pension benefits. Following the return of the verdict, defendant-appellant renewed her motion for judgment as a matter of law, pursuant to Fed. R. Civ. P. 50(b). After reviewing the standard for granting or denying a motion for judgment as a matter of law, the district court denied such motion. The plaintiff then moved for attorney's fees and costs, pursuant to 42 U.S.C. § 1988. Counsel for Rooney opposed the fees and costs requested. By oral ruling during a telephonic conference held on January 24, 1997, the district court awarded the plaintiff $54,022.70 in fees and costs.

By orders dated March 13 and 17, 1997, the district court ordered that judgment be entered against Rooney in the amount of $187,828.10 and that the complaint be dismissed against all remaining defendants. This appeal followed.

DISCUSSION

Rooney raises seven issues on this appeal. First, she asserts that she was entitled to judgment as a matter of law because the independent actions of various officials of the District, various members of the Board, various members of the disciplinary hearing panel and the Commissioner caused

Taylor's suspension and, accordingly, prevented Rooney's actions from being the proximate cause of any injury to Taylor. Second, Rooney argues that she was entitled either to absolute immunity or qualified immunity from liability for acting pursuant to her official duty to report complaints regarding the use of corporal punishment by teachers at her school. Third, she contends that the district court erred in submitting to the jury the issue of whether other school teachers and Taylor were similarly situated since that issue was clear as a matter of law. Fourth, Rooney asserts that the principle of collateral estoppel prevented Taylor from relitigating, subsequent to the decision of the disciplinary hearing panel, the issue of whether he was treated differently from similarly situated Caucasian teachers. Fifth, Rooney argues that the district court erroneously admitted evidence relating to certain allegedly discriminatory statements made by Rooney.[6] Sixth, she contends that the district court improperly instructed the jury, both in its charge as well as in its special interrogatories, that intent to inhibit Taylor's right of free speech could serve as the basis for his § 1983 claim when his First Amendment claim had already been dismissed. Finally, she argues that the court abused its discretion in calculating the attorney's fees award in this case. Because we conclude that the district court's judgment must be reversed on the first ground, we do not address Rooney's remaining contentions.

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6 Taylor presented the testimony of Elizabeth A. Phipps, a probationary teacher at South, who was denied tenure during Rooney's administration. Phipps, a Caucasian woman married to an African-American man, testified to several statements made by Rooney, which Taylor argued were indicative of racial animus on the part of Rooney. For example, Phipps testified as follows: "There was one incident when I was rushing to get my paycheck in the main office and I got it and I went, oh, wow. And she said to me, well, it beats the bread line, doesn't it?" Additionally, Phipps testified that Rooney made the following comment in response to Phipps' statement that she was having a "bad hair day": "[Y]ou have black, dark roots, don't you?"

Appendix A

I. *Standard for Deciding a Motion for Judgment as a Matter of Law*

The standard governing motions for judgment as a matter of law ("JMOL") pursuant to Fed. R. Civ. P. 50, formerly denominated motions for directed verdict or motions notwithstanding the verdict, *see generally Ahern v. County of Nassau*, 118 F.3d 118, 120 n.1 (2d Cir. 1997); *Samuels v. Air Transp. Local 504*, 992 F.2d 12, 14 (2d Cir. 1993), is well established. JMOL may not properly be granted unless the evidence, viewed in the light most favorable to the non-moving party, is insufficient to permit a reasonable juror to find in that party's favor. *See, e.g., Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1039 (2d Cir. 1992). In deciding such a motion, the court must give deference to all credibility determinations and reasonable inferences of the jury, and it may not itself weigh the credibility of witnesses or consider the weight of the evidence. *See Vasbinder v. Ambach*, 926 F.2d 1333, 1339-40 (2d Cir. 1991). Thus, judgment as a matter of law should not be granted unless

> (1) there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise [or] conjecture, or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded [persons] could not arrive at a verdict against [it].

Ahern, 118 F.3d at 120 (quoting *Bonura v. Chase Manhattan Bank, N.A.*, 795 F.2d 276, 277 (2d Cir. 1986) (per curiam)). The same standards govern the court of appeals in its review of a district court's decision denying a motion for JMOL. *See id.* Within this framework, we consider the propriety of JMOL in light of the substantive law and the evidence in this case.

II. Causation

Section 1983 provides the basis for Taylor's race discrimination claim against Rooney.[7] To prevail on such a claim, section 1983 requires that the plaintiff prove, *inter alia*, that the defendant caused the deprivation of his or her rights. *See Monell v. Department of Social Servs.*, 436 U.S. 658, 692 (1978). "The causation requirement of § 1983 is a matter of statutory interpretation rather than of common tort law." *City of Springfield v. Kibbe*, 480 U.S. 257, 269 (1987) (per curiam) (quotation omitted). The Supreme Court consistently has refused to impose § 1983 liability upon defendants where the causal connection between their conduct and the constitutional injury is remote rather than direct. *See, e.g., Martinez v. California*, 444 U.S. 277, 285 (1980). For example, in *Martinez*, the Court refused to hold parole officials liable for the death of a fifteen-year-old girl who was murdered by a parolee five months after his parole. *See id.* The Court stated:

> [W]e do hold that at least under the circumstances of this parole decision, [the girl's] death is too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law. Although a § 1983 claim has been described as a species of tort liability, . . . it is perfectly clear that not every injury in which a state official has played some part is actionable under that statute.

Id. (quotation and citation omitted).

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7 42 U.S.C. § 1983 provides, in pertinent part, that:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

In the present case, Rooney argues that she cannot be held liable because she did not proximately cause Taylor's suspension. Specifically, she argues that (1) Taylor was suspended based upon the independent investigations and findings of Fasullo and other District officials, the decision of the Board to prefer charges against Taylor, the decision of the disciplinary hearing panel that Taylor should be suspended for one year without pay and the Commissioner's rejection of Taylor's appeal from the panel's decision; and (2) that these intervening acts break the causal connection between Rooney's reporting of various incidents involving Taylor to the District and the decision to suspend Taylor. We agree. Accordingly, we must reverse the denial of JMOL.

Our decision in *Jeffries v. Harleston*, 52 F.3d 9 (2d Cir. 1995), controls the outcome of this case. In that case, we held that although the actions of certain defendants were unconstitutional, liability under § 1983 did not attach because such actions could not be considered the cause of any injury sustained by the plaintiff.

Leonard Jeffries, the chairman of the Black Studies Department at City College of New York ("City College"), which is part of the City University of New York ("CUNY"), sued City College President Bernard Harleston, CUNY Chancellor Ann Reynolds and fourteen CUNY trustees under § 1983, alleging violations of his First Amendment rights. *Jeffries*, 52 F.3d at 10-11. The suit arose out of the decision of the CUNY Board of Trustees to limit Jeffries' term as department chairman to one year, even though such terms typically last three years, because of a controversial speech Jeffries gave addressing the bias of New York State's public school system and the history of black oppression. In the course of such speech, Jeffries made several anti-Semitic remarks.

After the speech, Harleston and Reynolds arranged for the CUNY Board of Trustees to vote as to whether to limit Jeffries' term as department chair. Nine of the fourteen Trustees voted to limit Jeffries' term to a year, four voted to remove him immediately and one abstained from the vote because she had made derogatory comments about Jeffries in the past. Harleston and Reynolds did not vote because they were not Trustees. Jeffries sued all fourteen of the Trustees as well as Harleston and Reynolds. However, suit against one of the trustees was dropped when she died during the course of the trial, leaving fifteen defendants. The jury found that only six defendants took action against Jeffries because of his speech, and would not have done so had Jeffries not given the speech (Harleston, Reynolds and four of the living Trustees) (collectively, the "Harleston defendants").

Based upon the teachings of the Supreme Court in *Waters v. Churchill*, 511 U.S. 661 (1994), we held that despite the fact that six out of nine defendants took action in connection with Jeffries' demotion because of the speech and despite the fact that the jury decided that those "six defendants 'acted with the malicious intent to violate the plaintiff's rights . . . or with malicious intent to unlawfully injure him, or . . . with a callous or reckless disregard of the plaintiff's First Amendment rights,' " *Jeffries*, 52 F.3d at 14, the actions of these defendants were not the cause of the plaintiff's injury. We stated:

> [E]lementary principles of causation compel the conclusion that Jeffries' First Amendment rights were not violated . . . . The jury found that at least nine of the defendants, a clear majority, limited Jeffries' term because they expected his speech would harm CUNY (and not for invidious motives), *and* that this expectation was reasonable . . . . While Harleston and Reynolds were instrumental in putting the one-term issue on the

> Board's agenda, . . . and may indeed have done so to punish Jeffries, the nine votes based on legitimate grounds constitute a superseding cause breaking the causal chain between the tainted motives of Harleston and Reynolds and the decision to limit Jeffries' term.

Id. Accordingly, we held that there was no § 1983 liability in that case. *See id.* ("[T]he motives of the Harleston defendants —whatever they were—did not cause a cognizable injury to Jeffries.").

The situation of Rooney in the present case is indistinguishable from that of the Harleston defendants in all material respects. Specifically, we believe that the independent investigations of the incidents involving Rudy P. and Alexis A. and the other events culminating in the decision of the disciplinary hearing panel to suspend Taylor constitute a superseding cause of Rooney's injury, breaking the causal link between any racial animus Rooney may have had and the suspension. Because we conclude that no reasonable jury could find Rooney's actions to be the cause of Taylor's injury, we need not remand for a new trial. *See id.* (holding that no retrial is needed where elementary principles of causation compel the conclusion that plaintiff's rights were not violated).

Based on the record before us, there is no basis for concluding that any ill motives Rooney may have had impacted the decision to suspend Taylor. Based on the District's requirement that principals report all complaints regarding the use of corporal punishment in their schools, Rooney contacted District officials regarding the incidents involving Rudy P. and Alexis A. She also made some preliminary inquiries and obtained photographs of injuries sustained by Alexis A. Thereafter, District officials decided to conduct a more formal investigation into the matters and Rooney took

no part in this decision. Fasullo was charged with the responsibility for the conduct of the District's investigation. The Board later approved the filing of disciplinary charges based upon its own conclusion that there was probable cause to conclude that Taylor had violated Policy 5131 and was guilty of insubordination. Rooney also took no part in the decision to charge Taylor and had no control over the ultimate disposition of the charges. The disciplinary panel, acting pursuant to § 3020-a, concluded that there was a violation of the Corporal Punishment Policy in connection with the incident involving Alexis A. That panel deemed the appropriate punishment to be a one-year suspension without pay. Finally, the Commissioner dismissed Taylor's appeal, having concluded that there existed no basis for a reversal.

In examining the facts of this case, we find no basis to conclude that this case is distinguishable from *Jeffries*. Just as the Harleston Defendants could not be held liable in *Jeffries*, where a majority of Trustees voted to limit Jeffries' term for legitimate reasons, Rooney cannot be held liable where a majority of the disciplinary hearing panel voted, based on the evidence before it, to suspend Taylor for one year without pay.

Although not cited by the parties in their briefs, we note that we have held in *Warner v. Orange County Dept. of Probation*, that a defendant may be held liable for "those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties." 115 F.3d 1068, 1071 (2d Cir. 1997) (quotation omitted). Specifically, we concluded in that case that a probation department could be held liable under § 1983 for violating the First Amendment's Establishment Clause where (1) the probation department's presentence report recommended to a sentencing judge that the plaintiff be required to attend Alcoholics Anonymous ("AA")—a program containing a religious component—at the

discretion of the plaintiff's probation officer; (2) the sentence imposed by the judge contained this special condition; and (3) the assigned probation officer exercised the discretion granted to him and directed the plaintiff to attend AA meetings. Because the decision of the sentencing judge to impose the special condition was reasonably foreseeable, we rejected the contention that the decision imposing the condition was a superseding cause of the alleged constitutional injury. We therefore concluded that liability could attach to the probation department. However, we believe that the present case is distinguishable from *Warner* in two material respects. First, in *Warner*, although the probation department need not have recommended a specific program to the sentencing judge, it affirmatively recommended the AA program. Instead of merely recommending that an alcohol treatment program be considered, the probation department made a discretionary decision to recommend a particular program, the attendance at which ultimately caused the alleged constitutional injury. Second, it was not until the probation officer ordered that Warner attend the meetings that the injury occurred. The judge did not order Warner's attendance, but left the decision to the probation officer. In the present case, Rooney did not recommend that District officials prefer charges against Taylor; rather, she merely reported the filing of complaints relating to the incidents involving Rudy P. and Alexis A. in accordance with the instructions of District administrators, who were required to comply with N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(l)(3)(ii). She did not exercise any discretionary authority, nor was discretionary authority conferred upon her, as was the case in *Warner*. Moreover, unlike the situation in *Warner*, the injury sustained by Taylor occurred immediately upon the implementation of the disciplinary hearing panel's suspension decision, not after some positive action taken by Rooney. Neither the formal inves-

tigation nor the disciplinary hearing nor the sanctions were reasonably foreseeable to Rooney. All were independent causes that superseded Rooney's reports in causing any injuries that Taylor may have sustained.

Because no reasonable factfinder could conclude that Rooney was the cause of any constitutional harm or injury to Taylor, Taylor cannot prevail in this § 1983 action.

CONCLUSION

In accordance with the foregoing, we reverse the judgment of the district court and remand with instructions to enter judgment for Rooney.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK DATED MARCH 17, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 95 - 0178 (ADS)

CHARLES B. TAYLOR,

Plaintiff,

—

-against-

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ in their capacities as Members of the Board of Education, BRENTWOOD UFSD; ANNE ROONEY, In Her capacity as Acting Principal South Middle School; FRANK MAURO, In his capacity as Superintendent of School Brentwood UFSD,

Defendants.

JUDGMENT

On November 7, 1996, following several days of trial, a jury returned a verdict in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as Acting Principal South Middle School; an order of Hon. Arthur D. Spatt, United States District Judge, having been filed on March 14, 1997, directing the Clerk of

the Court to enter judgment in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as acting Principal South Middle School, in the sum of $67,412.00 for back pay, $5,143.80 for loss of medical insurance benefits, $61,249.60 for loss of pension benefits, and $54,022.70 for attorney's fees and costs, for a total award of $187,828.10; and that the plaintiff CHARLES B. TAYLOR take nothing of the remaining above-named defendants, it is

ORDERED AND ADJUDGED that judgment is hereby entered in favor of plaintiff CHARLES B. TAYLOR and against defendant ANNE ROONEY, in her official capacity as Acting Principal South Middle School in the sum of $187,828.10; that the plaintiff CHARLES B. TAYLOR take nothing of defendants BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ, in their capacities as Members of the Board of Education, BRENTWOOD UFSD, and FRANK MAURO, in his capacity as Superintendent of School Brentwood UFSD; and that the action is hereby dismissed as to those defendants.

Dated: Uniondale, New York
March 17, 1997

ROBERT C. HEINEMANN
Clerk of the Court

By: s/ Joseph Di Talia
JOSEPH DI TALIA
Deputy Clerk-in-Charge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK DATED MARCH 13, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

95 CV 0178 (ADS)

CHARLES B. TAYLOR,

Plaintiff,

v.

BRENTWOOD UNION FREE SCHOOL DISTRICT; BOARD OF EDUCATION, BRENTWOOD UNION FREE SCHOOL DISTRICT; ANTHONY FELICO, RUTH ROSENTHAL, STEVEN COLEMAN, FRANK CANNON, MARY REID, OWEN McCAFFREY, JAIME SUAREZ, in their capacities as Members of the Board of Education, BRENTWOOD UFSD; ANNE ROONEY, In her Capacity as Acting Principal South Middle School; FRANK MAURO, In his Capacity as Superintendent of School Brentwood UFSD,

Defendants.

* * *

ORDER

SPATT, District Judge:

It is hereby

Appendix C

ORDERED, that the February 5, 1997 order of this Court is vacated; it is further

ORDERED, that judgment be entered in favor of the plaintiff, against the defendant Anne Rooney in her official capacity as Acting Principal South Middle School, in the form of back pay in the sum of $67,412.00, loss of medical insurance benefits in the amount of $5,143.80, loss of pension benefits in the sum of $61,249.60, and attorney's fees and costs in the amount of $54,022.70; it is further

ORDERED, that judgment be entered in favor of the remaining defendants; and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Uniondale, New York
March 13, 1997

s/ Arthur D. Spatt
Hon. Arthur D. Spatt
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING PETITION FOR REHEARING FILED JUNE 24, 1998

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the _____ day of June one thousand nine hundred and ninety-eight.

Dkt No: 97-7481

Taylor

Appellee

v

Brentwood Union Free

Appellant

A petition for rehearing containing a suggestion that the action be *reheard* in banc having been filed herein by the appellee Charles B. Taylor.

Appendix D

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III, Clerk

By: s/ Beth J. Meador
Beth J. Meador,
Administrative Attorney

FILED
NOV 12 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 98-606

In The

Supreme Court of the United States

October Term, 1998

CHARLES B. TAYLOR,

Petitioner,

vs.

ANNE ROONEY, in her capacity as Acting Principal, South Middle School,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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23pp

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

1. Whether the Court of Appeals for the Second Circuit correctly applied principles of proximate causation to the facts of this case in holding that the school district's investigation into the petitioner's (Taylor) altercation with a student, the decision of the Board of Education to prefer charges against Taylor, the decision of the disciplinary hearing panel that Taylor had used excessive force and that he should be suspended for one year without pay and the Commissioner of Education's rejection of Taylor's appeal from the panel's decisions were sufficiently independent of defendant Rooney's initial reporting of this incident to constitute intervening causes, breaking any possible causal connection between the principal's reports and Taylor's suspension.

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Respondent, Anne Rooney, respectfully requests that Taylor's Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit be denied.

ADDITIONAL REGULATIONS INVOLVED

8 NYCRR § 19.5 Prohibition of corporal punishment.

(a) No teacher, administrator, officer, employee or agent of a school district in this State, or of a board of cooperative educational services in this State, shall use corporal punishment against a pupil.

(b) As used in this section, *corporal punishment* means any act of physical force upon a pupil for the purpose of punishing that pupil, except as otherwise provided in subdivision (c) of this section.

(c) In situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed, nothing contained in this section shall be construed to prohibit the use of reasonable physical force for the following purposes:

(1) to protect oneself from physical injury;

(2) to protect another pupil or teacher or any person from physical injury;

(3) to protect the property of the school or others; or

(4) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers

and duties, if that pupil has refused to comply with a request to refrain from further disruptive acts.

8 NYCRR § 100.2 General School Requirements

(l) School Conduct and Discipline

(3) Corporal punishment. (i) The term *corporal punishment*, as used in this section, shall mean any act of physical force upon a pupil for the purpose of punishing that pupil. Such term, as used in this section, shall not mean the use of reasonable physical force for any of the following purposes:

(a) to protect oneself from physical injury;

(b) to protect another pupil or teacher or any other person from physical injury;

(c) to protect the property of the school or of others; or

(d) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts;

provided that alternative procedures and methods not involving the use of physical force cannot reasonably be employed to achieve the purposes set forth in clauses (a) through (d) of this subparagraph.

(ii) In every school district and supervisory district, the trustee, trustees, board of education or board of cooperative educational services, shall submit a written semiannual report to the Commissioner of Education, by January 15th and July 15th of each year, commencing July 1, 1985, setting forth the substance of each complaint about the use of corporal punishment received by the local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case.

STATEMENT OF THE CASE

Taylor's employment with the Brentwood School District began in 1970, long before Rooney became principal. Since that time, Taylor had been involved in not less than thirteen documented incidents concerning complaints made against him of physical and verbal abuse of students at South Junior High School ("South"), aged 12 to 16. In almost every instance, Taylor would submit rebuttal letters, acknowledging the incidents but claiming that the student's and/or parent's version was incorrect and/or claiming that his use of force was justified. These incidents were well-documented and more than just the accusations of a "disgruntled parent or a disruptive student." (E 4,51,53-55,72-79,189,191-94,196-98, T 88,116, 270,712-13,843-45,1148-50,1336,1430-36,1457-58,1974-75.)[1]

In addition to denying responsibility for the incidents, it was Taylor's practice to accuse anyone that disagreed with him of racism. For example, in 1976 he filed a complaint with the New York State Division of Human Rights charging the school

1. "A" designations refer to the Joint Appendix Volume below, "E" designations to the Exhibits Volume and "T" designations to the Trial Transcript.

district, the Superintendent of Schools, the Administrative Assistant, the Principal (not Rooney), the Assistant Principal and Director of Athletics with racial discrimination. (E 5.) The complaint was dismissed as meritless. (T 1191.) In this action, Taylor had accused virtually the entire Brentwood School District Board of Education, its supervisory staff and even the disciplinary hearing panel members of racism. (A 15-25.)

The two incidents for which Taylor was ultimately charged were as follows: In 1989, Taylor was accused of putting a student, Rudy P., in a headlock, which caused injury to Rudy's arm and neck. After this incident, Rooney became concerned about the large number of complaints by students and parents of incidents of verbal abuse and physical force involving Taylor. After discussing her concerns with Michael Welch, then Director of Elementary Education and former principal of South, and Michael Fasullo, then Director of Employee Relations and Planning, (T 539-40), Rooney sent Taylor a memorandum on May 23, 1989, about the Rudy matter. In the memorandum, she referenced a history of the complaints against Taylor, including those which arose while Welch was principal, and indicated that any further incidents involving Taylor's use of force against a student would be suspect. (E 226-29.)

By said memo, Rooney was attempting to get Taylor's attention by putting before him his history of complaints of improper conduct toward students, in the hope that he would realize there was a serious problem and that he would get some help. (T 1462-63.) Taylor submitted a rebuttal letter to the memo that included suggestions of racism. (E 84-91.)

Since 1985, the New York State Commissioner of Education has required that school districts submit semiannual reports of any complaints of corporal punishment. (E 174-88.) The reports require information concerning the investigation

undertaken in response to the complaint, and the action taken, if any, by the school authorities. Building principals are responsible for providing such information to Central Administration. Fasullo was responsible for collecting the information, preparing the semiannual reports and transmitting the reports to the Commissioner. (T 423,1812-13.)

Procedurally, while an incident can be resolved at the building level, the ultimate determination of whether the matter has been so resolved or whether it requires further investigation rests with Central Administration. (T 1885-90,1959.) Such was the case in an incident involving an Industrial Arts teacher and a student, James W. Fasullo personally discussed the incident with the principal of East Junior High School, despite the apparent resolution of the matter at the building level and the detailed report submitted to Fasullo by the principal describing the incident, his investigation and the results. (E 234-5.)

Frank Mauro, then Superintendent of Schools, and Les Black, then Associate Superintendent, both testified that even if a parent does not want the matter pursued, Central Administration has the responsibility to make its own determination. (T 607, 1959.) The Rudy incident was of the type required to be included in the reports.

Subsequent to Rooney's memorandum to Taylor, a meeting was held in January 1989 with Black, Welch, Fasullo, Taylor and his attorney, where Taylor was given the opportunity to present his version of the events involving Rudy. A second purpose of the meeting was to let Taylor know that the Rudy matter was serious enough to result in charges against him and was not just a building level matter. (T 1943,1979-87, E 231-33.) Several areas of concern were pointed out to Taylor, one of which was the recurrent allegations of verbal abuse and use of physical force on students. Another was that Taylor's feelings

of racial persecution had been asserted during two prior administrations. (E 231.)

On December 5, 1991, Taylor, had an altercation with a student, Alex A. It was alleged that Taylor, a martial arts expert, flipped the student and then grabbed him by the throat to get him back on his feet. After the altercation with Taylor, there were visible bruises and red welts on the student's neck. When Rooney saw this, she asked the Assistant Principal, Ithiel Lloyd, to take pictures of the student's neck using the Polaroid camera that is kept in the office for reporting incidents of suspected child abuse. (T 1472-74,1479.)[2]

Contrary to Taylor's attempt to infer that Lloyd had never photographed a student before, (Petition, p. 4) Lloyd's actual testimony was that it was the first time he had taken pictures "of a student with a complaint like this." (T 1722.) Additionally, Taylor's allegations concerning Rooney's duties and responsibilities, and the "facts" allegedly underlying the extent of Rooney's involvement in the charges brought against Taylor, (Petition, pages 4-6) are not supported by the record, nor are Taylor's conclusions and opinions.

After Rooney learned of the incident, she went to Taylor's classroom and told him about the welts on Alex's neck and what Alex had said. (T 1475-76.) Initially, Taylor did not say he had been attacked, but when he met with Rooney later in the day and Alex repeated his story, Taylor then said Alex had taken a swing at him and that they ended up on the floor. (T 1477-1480.) Taylor further claimed that the welts were caused by the student's cousin, who tried to separate Taylor and Alex.

---

2. On Page 4 of his Petition, Taylor avers that he "gently flipped Alex to the floor." After four years of litigation, this is the first time that Taylor has admitted to flipping this student. At his 3020-a hearing, Taylor specifically denied flipping Alex, gently or otherwise. (E 167.)

(E 97-98.) Taylor also said that he had a statement from a student who witnessed the incident, Michael N. Although Rooney took Taylor's report, she initially refused to take Michael's statement because it appeared to have been edited and she told Taylor that she wanted to make her own investigation. (T 1481-82,1640-43.) Although not initially admitted into evidence, when Taylor testified that Michael's statement said that he and Alex were both on the floor, the statement was used to impeach him on cross-examination because there was nothing in the statement about Taylor being on the floor at all. (T 1357.)

When Rooney reported the incident to Fasullo, as she was required to do with all complaints of physical force as discussed above, Mauro ordered an independent investigation. This investigation was conducted by Fasullo. (T 499,574,1427-28,1852-53.)

Fasullo outlined the investigation he undertook, at which time he had Taylor's statement and the photographs. Initially he met with Taylor, Taylor's union representative, Malossi and the union president, Hogan. (T 1853.) Fasullo then spoke to a number of students who were witnesses to the incident and that had been recommended either by Taylor or Taylor's union representative, including Michael N. This last student later testified at the 3020-a hearing that Taylor flipped Alex. (E 167.) Fasullo did not accept Taylor's version of the incident. (T 1853-56, E 236-39.)

Fasullo's report following his investigation stated that the evidence indicated there was reasonable cause to conclude that Taylor's actions "can easily be categorized as corporal punishment and not self defense." One of the key issues was the cause of the severe bruises on each side of Alex's neck. Fasullo's report recommended that, in light of Taylor's history

and the Commissioner's Regulations, charges under the Education Law be preferred against Taylor. It was Fasullo's opinion that Taylor had precipitated the incident with Alex by his actions toward the student at the outset, and that the marks on the student's neck clearly indicate a degree of force far beyond that which would be required under the circumstances. (E 236-39.)

Although Rooney had reported the incident to Fasullo and Welch, was interviewed as part of Fasullo's investigation and provided the photographic evidence of the welts on the student's neck, she was not present during Fasullo's interview with the students who had witnessed the incident, she was not consulted during or after the investigation, nor did she participate in the decision to prefer charges against Taylor. (T 1483-85,1852-53.)

At the December 1991 meeting of the Board of Education, Black informed the Board about the incident and presented a detailed background relating to all of the prior incidents involving Taylor, including those under two prior principals. (T 1950-55.)

On December 11, 1991, Taylor was suspended with pay. (E 36) The Board ultimately decided to prefer charges against Taylor on both the Rudy and Alex incidents. The earlier incident was included because of the large number of prior complaints of excessive force involving Taylor, which indicated a pattern of inappropriate conduct toward students and documented the fact that Taylor had been given prior warnings. (T 417,485-87,497, 1950-55.)

Hearings were held on the school district's charges in 1992. At the hearings, Taylor was represented by counsel, testified and called witnesses on his behalf and cross-examined the

school district's witnesses. (E 154-165.) After the proceedings were closed, the hearing panel dismissed the charges pertaining to Rudy but sustained the charge on the Alex incident and the charge of insubordination because he had been given prior warnings. (E 165.) The panel specifically found that Taylor had used excessive force in disciplining this student, resulting in bruises on Alex' neck. (E 166.)

As part of the 3020-a hearing, Taylor claimed that he had been treated differently than another teacher, J. Basso, who also had been involved in an incident with the same student the month before Taylor's altercation. In addressing Taylor's claim, the panel explicitly found that:

> A better example of the proper use of force was that described by Teacher Basso, witness for Respondent, who testified that he wrapped Student Alexis in a bear hug and carried him to the office when faced with unruliness.

(E 167.)

Taylor appealed the panel's decision to the Commissioner of Education, who dismissed the appeal. (E 170-173.) In said appeal, Taylor again claimed that there were discrepancies in the school district's treatment of him as compared to Mr. Basso. The Commissioner's opinion noted that the hearing panel did address this issue, but found significant differences between Taylor's and Basso's use of force, as noted above. (E 172.)

After the filing of plaintiff's civil rights complaint, the school district moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint, *inter alia*, on grounds of collateral estoppel. (A 26-28.) The school district argued that the factual issues of Taylor's use of excessive force

against Alex, Taylor's insubordination for failing to heed prior warnings and that Taylor was not treated any differently than other teachers had all been decided against Taylor by the hearing panel. Contemporaneously, the hearing panel member defendants cross-moved on immunity grounds. The district court judge granted the hearing panel members' motion but denied the school district's motion, holding that "the constitutional violations were never raised in the hearing panel proceedings." (A 48.)

At trial, both the 3020-a Panel's decision and the Commissioner's affirmance were admitted into evidence. However, the trial judge charged the jury that the decisions were not determinative of the issues in the case and that Taylor could refute every allegation ever made against him, including Alex's. (T 203-14,207,2336.)

At the close of Taylor's case-in-chief, the defendants moved to dismiss both the First Amendment and equal protection claims. The motion on the First Amendment issue was granted and decision on the equal protection claim was reserved, although the judge opined that Taylor's record, as compared to the other teachers that Taylor claimed to be "similarly situated" was entirely different and that he did not consider them similar. (T 1408-10.) At the close of the evidence, the judge still reserved decision on the equal protection claim, although he again expressed doubts about whether Taylor's long history, compared to the other teachers, made those teachers similarly situated. (T 2139.)

The jury returned a verdict in favor of all defendants, with the sole exception of Rooney. (A 59-68.) The equal protection issue was renewed with the trial judge, as was Rooney's duty to report the precipitating incident and the issue of proximate cause, all as part of Rooney's motion for judgment as a matter

of law. (T 2419-28.) The judge denied Rooney's motion and entered judgment for Taylor. (A 173.)

Rooney appealed the district court's judgment to the Court of Appeals for the Second Circuit. The Second Circuit reversed the judgment, holding that their prior decision in *Jeffries v. Harleston,* 52 F.3d 9 (2d Cir. 1995) controlled the outcome of this case and that the intervening acts of the independent investigations and findings of Fasullo and other school district officials, the decision of the Board to prefer charges, the decisions of the disciplinary hearing panel that Taylor be suspended and the Commissioner of Education's rejection of Taylor's appeal broke any causal connection between Rooney's reports of Taylor's inappropriate conduct toward the students and Taylor's suspension.

Following the decision, Taylor moved for rehearing with a suggestion for rehearing *en banc* and later moved to recall the Court of Appeals' mandate. Both motions were denied.

Taylor's petition for certiorari to this Court ensued.

REASONS FOR DENYING THE WRIT

I.

THE COURT OF APPEALS CORRECTLY APPLIED PRINCIPLES OF PROXIMATE CAUSATION TO THE FACTS OF THIS CASE, INCLUDING THE DOCTRINES OF SUPERSEDING AND INTERVENING CAUSES.

A. The Second Circuit's Decision does not Conflict with any Rulings of this Court.

Taylor claims that the Second Circuit's decision below conflicts with the decisions of this Court in *Malley v. Briggs,*

475 U.S. 333, 344 n.7, 106 S. Ct. 1092, 1098 n.7 (1986) and *Monroe v. Pape*, 365 U.S. 167, 1887 S. Ct. 373, 384 (1961). However, both *Malley* and *Monroe* are Fourth Amendment cases and Taylor's Petition merely invokes dicta from these cases for the general propositions that "principles of causation borrowed from tort law are relevant in civil rights actions brought under Section 1983" and that "tort defendants, including those sued under § 1983 are responsible for the natural consequences of their actions." Petition, p. 8.

Rooney does not dispute these elementary propositions, but respectfully reminds the Court that "principles of causation" include intervening and superseding acts, which, as recognized by this Court, will relieve a tort defendant of liability, even for admittedly wrongful conduct. *See Exxon Company U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837, 116 S. Ct. 1813, 1818 (1996) ("Superseding cause operates to cut off the liability of an admittedly negligent defendant.")

At the outset, it must be recognized that, in a superseding cause analysis, the tort defendant's initial alleged act must have been *wrongful*. In the case at bar, not only was Rooney's initial act of reporting Taylor's altercation with Alex not wrongful, i.e., the incident indisputably occurred and the student was actually injured, but her report was *mandated* pursuant to the Commissioner of Education's requirements, 8 NYCRR § 100.2(l)(3)(ii). This puts the situation in the case at bar on an entirely different footing than the state trooper in *Malley*, where the trooper *interpreted* words that he overheard in a wiretapped conversation as referring to marijuana usage. 475 U.S. at 337-38.

Taylor's Petition, then, does not rely on any precedent of this Court, but instead primarily relies on the First Circuit case of *Springer v. Seamen*, 821 F.2d 871 (1st Cir. 1987). Not only

is this an improper basis for petitioning this Court, but the legal and factual differences between *Springer* and the case at bar make the two cases as different as night and day, and thereby cause no conflict between the decisions in *Springer* and the case at bar. Procedurally, *Springer* was decided after the granting of the defendants' motion for summary judgment by the district court. In reversing the district court, the First Circuit found there were material issues of fact as to whether the Postal Service's investigation and termination decision were sufficiently independent of the defendants' discriminatory actions to constitute superseding causes. *Id.* at 879.

Moreover, the factual differences between the two cases in all respects are far greater. For example, the plaintiff in *Springer* "had a *perfect work record*, and the people on his route regarded him highly" and "*No one on his mail route had ever made any complaint through his long term of carrier service.*" *Id.* at 873 (emphasis added). Contrast this with Taylor's long history of at least thirteen documented incidents of physical and verbal abuse of students and the numerous complaints by parents that he was treating their children improperly.

Of even greater dissimilarity is the evidence of racial animus in the two cases. In *Springer*, the evidence that the defendants were racially biased against the plaintiff consisted of loathsome racist remarks and threats. *Id.* at 873-74. Compare the remarks in *Springer* to the innocuous comments attributable to Rooney by Elizabeth Phipps, a probationary teacher who was denied tenure, as reported in the Second Circuit's opinion. *See* Petition, App. A, p. 14a, n.6.

The paramount difference between the two cases, however, is the degree of involvement the respective defendants had during the subsequent investigation. For example, in *Springer*,

it was the defendants' actions that resulted in an allegedly coerced confession from Mr. Springer and there were also allegations that the defendants deliberately mishandled the letters that were sent to test Mr. Springer's honesty. It was these fraudulent acts that led the First Circuit to conclude that there were, at least, issues of fact as to the independent nature of the investigation. 821 F.2d at 879.

In light of the foregoing, it is inconceivable that Taylor can claim that: "the fact pattern in *Springer* is very similar to the fact pattern in the instant case." Petition, p. 9. There was not a shred of evidence that Rooney improperly influenced Fasullo's investigation in any manner.

Taylor's statement on page 5 of his Petition that, "Rooney also determined which students Fascullo, [sic] from the Superintendent's office would interview and she prepared those students for their meeting with Fasullo," is blatantly false. A review of the cited pages from the trial transcript reveals no such testimony. Rather, the pages reference Rooney's refusal to accept a statement from one student, Michael N., because it appeared to have been edited. (T 1640-42.) Fasullo testified that the students he interviewed were recommended either by Taylor or his union representative, not Rooney, and Fasullo's report indicates that Taylor explicitly recommended one student, Michael N. (E 236, T 1853.)

The facts of this case are closer to those in *Arnold v. International Business Machines Corporation*, 637 F.2d 1350 (9th Cir. 1981), cited in the *Springer* opinion. In *Arnold*, the plaintiff was arrested, searched and indicted for the theft of trade secrets, conspiracy and receiving stolen property. The arrest was a result of a Task Force organized by the state Attorney General, the district attorney and police to investigate the theft of IBM's proprietary information and trade secrets

over several years. After the criminal prosecution was terminated following the suppression of documentary evidence, Mr. Arnold sued his former employer for conspiring with state officials to violate his civil rights. IBM moved for and was granted summary judgment. The district court judge ruled that IBM was not the legal cause of Arnold's arrest, search and indictment.

In affirming the dismissal, the Ninth Circuit held that mere participation in the investigation of a civil rights plaintiff is not enough to impose liability, despite IBM's involvement in the Task Force's investigation having been far greater than Rooney's involvement in Fasullo's investigation in the case at bar. Compare, 637 F.2d at 1357 with the facts in the case at bar. The Ninth Circuit explicitly rejected a "cause in fact" argument and held that IBM's *lack of control* of the investigation relieved it of any liability on proximate cause grounds. 637 F.2d at 1357. The record is clear that Rooney had no involvement in Fasullo's independent investigation, that she exercised no control over the investigation and that she took no part in the decision to prefer charges against Taylor. Taylor can point to no evidence that contradicts or taints the independent nature of Fasullo's investigation and the Second Circuit's decision was correct.

B. The Second Circuit did not Misapply this Court's Prior Rulings on Causation.

As stated in the previous section, the decision of the Second Circuit did not misapply any of this Court's prior rulings on causation from either the cited *Malley* or *Monroe* opinions, *supra*. Although Taylor makes no additional references to which decisions of this Court he is referring to in this section of his Petition, he seems to suggest that the Second Circuit improperly relied on *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553 (1980), a foreseeability case.

Just as mere participation is not enough to impose civil rights liability, as in *Springer, supra*, neither is mere foreseeability, as in *Warner v. Orange County Dept. of Probation*, 115 F.3d 1068, 1071 (2d Cir. 1996), in cases where a defendant relies on an independent investigation into the subject matter of the plaintiff's complaint as a superseding cause, unless there is also evidence that a defendant falsified information or otherwise improperly influenced the investigation, as in *Springer*. *See also Barts v. Joyner*, 865 F.2d 1187, 1195 (11th Cir. 1989) (intervening acts of prosecutor, grand jury, judge and jury held to break the chain of causation unless plaintiff can show that these acts were the result of deception or undue pressure by the defendant policemen). Not only was there no evidence that Rooney either controlled or improperly influenced the investigation, but the jury explicitly found that the other defendants did not violate Taylor's rights. (A 60-61.)

C. The Second Circuit Correctly Applied its Prior Decision in *Jeffries v. Harleston*, and the Decision does not Conflict with *City of Springfield, Massachusetts v. Kibbe.*

This section of Taylor's Petition, suggesting that the Second Circuit misapplied its own decision in *Jeffries v. Harleston*, 53 F.3d 9 (2d Cir. 1995), is the height of presumption. It is also not a recognized basis for this Court to grant a Petition for Certiorari. In any event, it must be noted that, just as in *Jeffries*, there was no evidence that anything Rooney did improperly influenced Fasullo's investigation.

Taylor is being especially disingenuous when he states that: "There was no conclusive proof that the Superintendent of Schools, the Board of Education and the Disciplinary Panel were not influenced by the actions of Rooney." Petition, p. 14.

Aside from the inherent difficulty of proving a negative, Taylor forgets that, as plaintiff, *he* had the burden of proving that Rooney's actions tainted the investigation.

Rooney testified that she did not request that charges be brought against Taylor either for the Rudy P. or the Alex A. incidents and that she was not consulted about the bringing of these charges. (T 1485.) If Taylor was in possession of any information to refute this testimony, it was incumbent on him to produce it. In the absence of such evidence, there could be no basis for which a reasonable jury might conclude that Rooney improperly influenced the investigation or the subsequent intervening acts.

The Second Circuit's decision is also not in conflict with this Court's opinion in *City of Springfield, Massachusetts v. Kibbe*, 480 U.S. 257, 107 S. Ct. 1114 (1987) (per curiam). It is difficult to understand how *Kibbe*, a decision to dismiss a writ that had been improvidently granted in an action to decide if ordinary negligence would suffice to establish municipal liability under § 1983 for inadequate training of city employees, is in any way relevant to the issues in this case.

D. The Second Circuit Correctly Applied the Standard for Review of the Denial of a Motion for Judgment as a Matter of Law.

Again, Taylor presumptively argues that the Second Circuit improperly relied on its own precedent, *Samuels v. Air Trans. Local* 504, 992 F.2d 12 (2d Cir. 1993); *Sir Speedy, Inc. v. L&P Graphics, Inc.*, 957 F.2d 1033, 1039 (2d Cir. 1992) and *Simblest v. Maynard*, 427 F.2d 1, 4 (2d Cir. 1970), by placing "undue emphasis on the sufficiency element of the evidence." Petition, p. 17. A review of the Second Circuit's decision, however, reveals no such analysis of the sufficiency of the evidence.

Quite the opposite, the Second Circuit both correctly stated the applicable standard for review of the denial of a motion for JMOL, as well as concluding that: "Because no reasonable factfinder could conclude that Rooney was the cause of any constitutional harm or injury to Taylor, Taylor cannot prevail in this § 1983 action." Petition, App. A, pp. 15a, 22a.

It is within this standard that the Second Circuit rendered its opinion. There was absolutely no evidence adduced at trial that would allow a reasonable juror to conclude that Rooney either controlled or improperly influenced the school district's investigation into the Alex A. altercation, the subsequent decision to prefer charges against Taylor, the hearing panel's determinations or the Commissioner of Education's affirmance. Therefore, none of Taylor's cited authorities, *Martinez, Warner, Springer, supra,* or *Guitierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989), diminish the Second Circuit's ruling in this action. Taylor's Petition for a Writ of Certiorari presents no issues for this Court to consider, other than Taylor's disagreement with the Court of Appeals' disposition of an individual case and must be dismissed.

CONCLUSION

This case presents no questions of constitutional import in terms of causation principles applicable in section 1983 cases, as well as the standard of review of the denial of a motion for JMOL. The decision of the court below does not conflict with any decisions of this Court, nor is there any conflict with the cases cited from the First, Ninth, Eleventh or D.C. Circuits that the other Circuits would have reached a different result than the Second Circuit did in the case at bar.

Accordingly, Rooney respectfully requests that Taylor's Petition be denied.

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No. 98-606

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

CHARLES B. TAYLOR,

Petitioner,

vs.

ANNE ROONEY, in her capacity as
Acting Principal, South Middle School,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ARGUMENT

I. INTRODUCTION

Petitioner relies primarily upon the arguments set forth in the original petition as the basis for this Court granting the Petition for Certiorari. However, there are additional issues raised by Respondent in her Brief in Opposition to which Petitioner is compelled to respond.

Respondent incorrectly concludes that there is no precedent of this Court upon which Petitioner can rely for the proposition that tort principles of causation apply to civil rights cases brought pursuant to 42 U.S.C. § 1983. Respondent further misplaces her reliance on *Exxon Company U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 116 S. Ct. 1813 (1996) for the proposition that there is a per se rule that intervening or superseding acts relieve her of liability.

Respondent's reliance on *Arnold v. International Business Machines Corporation*, 637 F.2d 1350 (9th Cir. 1981) is also incorrect. In citing *Arnold, supra*, Respondent seeks to improperly engage this Court in a comparative factual analysis as to the degree of involvement a defendant must have in an investigation in order for that defendant to be deemed sufficiently in control of the investigation which leads to the ultimate action against the plaintiff. The Ninth Circuit's "lack of control doctrine" in *Arnold, supra*, is not an automatic basis for relieving a defendant of foreseeable consequences which are set in motion by their actions. *Warner v. Orange County Department of Probation*, 115 F.3d 1068, 1071 (2d Cir. 1997).

Respondent also engages in a detailed recitation of a misstatement of facts as they relate to her involvement at every critical stage of the investigations and deliberations which led to the deprivation of Petitioner's constitutional rights. Both the Second Circuit and the Respondent in her Brief in Opposition ("Opposition") mischaracterize the extent of Respondent's involvement in the process which culminated in Petitioner being suspended for one year without pay for allegedly violating the Brentwood Union Free School District's corporal punishment policy, while similarly situated white teachers were not subjected to the same treatment by Respondent.

Respondent's attempt to have this Court view her role as only that of reporting Petitioner's "altercation with Alex" pursuant to New York State Commissioner of Education Regulations at 8 NYCCR 100.2(1)(3)(ii) must also be rejected. The record is replete with testimony and documentary evidence establishing that Respondent took a far more active role than just merely reporting an incident. Respondent set the investigation in motion and remained involved in the investigation with Fasullo and was one of the major witnesses against Petitioner at his disciplinary hearing. (T. 539-540, T. 1648-1650, E-236).

The decision below raises several major doctrinal questions of law as to the applicability of the principle of causation in the context of a civil rights case brought pursuant to Section 1983 and the inapplicability of the expansion of *Jeffries v. Harleston*, 53 F.3d 9 (2d Cir. 1995), a strict First Amendment case, to Section 1983 actions in which there are allegations of racial discrimination. The Second Circuit has, as a matter of law, crafted a "pseudo-*Jeffries*" rule which departs in clear and critical respects from this Court's application of causation to Section 1983 cases. *See Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984 (1976) and *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553 (1980).

The Second Circuit's determination that "[t]he causation requirement of 1983 is a matter of statutory interpretation rather than of common tort law", citing *City of Springfield v. Kibbe*, 480 U.S. 257, 269 (1987) (per curiam) is in derogation of this Court's long-standing recognition of the principle that issues of proximate cause and superseding causes are matters for the finder of fact to decide. *See Exxon Company U.S.A. v. Sofec, Inc., supra* at 1819, citing *Milwaukee and St. Paul Railway Company v. Kellogg*, 94 U.S. 469 (1877).

The petition for certiorari should be granted to prevent the adoption of a blanket rule which removes the issue of causation from the purview of the trier of fact and which determines as a matter of law that all intervening and superseding acts break the causal chain of connection, thereby relieving a defendant of any liability for the foreseeable consequences which flow from his actions.

II. THE SECOND CIRCUIT MISAPPLIED THE DOCTRINE OF PROXIMATE CAUSE AS ADOPTED BY THIS COURT AND THE SEVERAL CIRCUIT COURTS IN SECTION 1983 CASES.

In her opposition, Respondent asserts that Petitioner can not rely on any precedent of this Court which supports the application of tort law principles of causation in Section 1983 civil rights cases. Opposition, p. 12. To the contrary, this Court in *Martinez v. California*, 444 U.S. 277, 100 S. Ct. 553 (1980) acknowledges that a Section 1983 claim is a species of tort liability, citing *Imbler v. Pachtman*, 424 U.S. 409, 417, 96 S. Ct. 984, 988 (1976).

Likewise, for the reasons previously stated in the Petition, this Court in *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092 (1986) clearly acknowledged that principles of tort law causation are relevant to causation issues raised in the context of civil rights violations pursuant to Section 1983 actions.

Several Circuits, including the Second Circuit, have acknowledged that the Supreme Court recognizes and applies principles of tort law causation to civil rights actions brought under Section 1983. In *Springer v. Seaman*, 821 F.2d 871 (1st Cir. 1987), the court applied tort law principles of causation to determine that the defendants were responsible for instigating the investigation of plaintiff and that the investigation was a substantial or motivating factor in the Postal Service's decision to terminate Springer's contract. *Id.* at 879. Similarly here, Rooney was responsible for the investigation of Petitioner. She, as principal, made the determination as to whether an incident should be reported to Central Administration or resolved at the building level (T-596); Rooney also discussed the matter of possible disciplinary charges with Petitioner (T-539); Former Superintendent Mauro also testified that Rooney met with Central Administration to discuss the incidents involving Taylor (T-539-540).

Respondent is grasping at straws when she tries to distinguish *Springer* from the instant case on procedural grounds. The fact that *Springer* was decided after the granting of a motion for summary judgment by the district court in no way diminishes the import of the applicability of the First Circuit's determination that where there were

material issues of fact as to whether the Postal Service's investigation constituted a superseding cause, summary judgment was inappropriate. Inherent in the First Circuit's ruling is an acknowledgment of the fact that issues of proximate cause are applicable in civil rights actions brought pursuant to Section 1983 and that further these are questions of fact to be determined by the trier of fact, not by the court as a matter of law.

Respondent is further misguided in her conclusion that *Springer* is inapplicable because of the degree of involvement of the respective two defendants during the subsequent investigation. Opposition, p. 13. The application of *Springer* does not turn on the mirroring of fact patterns, but rather on the application of the legal analysis of causation to the respective facts. In both cases, there was evidence that the respective defendants continued to be active in the subsequent investigation. In the case of Respondent, this is borne out by the testimony of Rooney herself, by Fasullo, by Malossi, the union representative; by Lloyd the assistant principal; and by Mauro former Superintendent of Schools. (T. 133, 134, 139, 539-540, 596, 1853, 1854). Another First Circuit case where the doctrine of tort law causation is applied to a 1983 case is *Scott-Harris v. City of Fall River*, 134 F.3d 427 (1st Cir. 1997). Here the court acknowledged and cited as accepted law, this Court's determination in *Monroe v. Pape*, 365 U.S. 167, 187, 81 S. Ct. 473, 484 (1961) that Section 1983 actions are to be considered against the background of traditional tort principles. *Scott-Harris, supra* at 441. In applying that analysis, the First Circuit acknowledged that in tort law, determinations relating to causation are customarily "questions of fact for the jury, to be solved by the exercise of good common sense in the consideration of the evidence of each particular case.", citing *Springer v. Seaman*, 821 F.2d 871, 876

Just as the First Circuit concluded that the jury could have reasonably concluded that the defendant's overall conduct was a substantial factor in depriving the plaintiff of her constitutional rights, so could the jury in the instant case have reasonably concluded that Rooney's overall involvement in the investigation, the interviewing of students, the meetings with central administration, the transmittal of memos to her superiors concerning Petitioner, and her involvement

as a major witness at the trial, all pointed to her being the proximate cause of Petitioner's injury. Even as the First Circuit acknowledges, proof of involvement need not be "robust" as long as it suffices in the context of the record as a whole to render the issue of causation susceptible to differing evaluative determinations. *Scott-Harris, supra* at 442. The court went on to conclude that because the jury reasonably could have adopted one such view of the evidence and concluded that the defendant made a successful effort to have the plaintiff ousted, the jury's liability finding must stand. *Id.* at 442.

Likewise, in the instant case, the jury was properly charged as follows:

> . . . Third and final element of plaintiff's 1983 equal protection claim is that defendants' actions were a proximate cause of the damages and injury to plaintiff . . . There must be a direct causal link between the defendants' violation and the damages to plaintiff.

(T. 2354). There was no objection to these instructions and they are the law of the case. *Scott-Harris, supra* at 442, citing *Moore v. Murphy*, 47 F.3d 8, 11 (1st Cir. 1995). The Second Circuit has also acknowledged that tort law principles of causation are applicable in civil rights cases brought under Section 1983. In *Warner v. Orange County Dep't. of Probation*, 115 F.3d 1068, 1071 (2d Cir. 1997), the court, citing *Malley v. Briggs*, 475 U.S. 335, 344 n.7, 106 S. Ct. 1092, 1098 n.7 (1986) and quoting *Monroe, supra*, 365 U.S. at 187, 81 S. Ct. at 484, the Second Circuit recognized that tort defendants, including those sued under 1983, are "responsible for the natural consequences of [their] actions." The Second Circuit went on to acknowledge that an actor may be liable for "those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties", citing *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989). Respondent merely states at page 16 of the Opposition that foreseeability is not enough where there is a superseding cause of an independent investigation. However, the jury reasonably determined that the Fasullo investigation did not break the causal connection between Rooney's actions and the foreseeable consequences that Petitioner would be charged, especially when Rooney had warned Petitioner of possible charges. (T. 539).

III. RESPONDENT'S RELIANCE ON *EXXON, SUPRA* AND *ARNOLD v. INTERNATIONAL BUSINESS MACHINES CORPORATION*, 637 F.2d 1350 (9th Cir. 1981) IS MISPLACED.

Respondent erroneously refers to the decision in *Exxon Company U.S.A., supra*, for the proposition that intervening and superseding acts will relieve a tort defendant of liability even for admittedly wrong conduct. *Id.* at 1818. However, *Exxon* is of little if any support to Respondent's position since it is an opinion wherein this Court has opined that principles of tort law apply in admiralty cases.

Likewise, Respondent cannot rely upon *Arnold, supra*. In that case, the Ninth Circuit emphasized that IBM was merely a good faith complaining party and that it had not considered the plaintiff a suspect before bringing him to the authorities. *Id.* at 1356-57. It is noteworthy that the court in *Arnold, supra*, stated specifically that

> [i]f Arnold could point to any fact that would tend to show that defendants had some control or power over the Task Force and that the defendants directed the Task Force to take action against Arnold there would certainly be a dispute of material fact on the issue of proximate cause sufficient to reverse the summary judgement.

Id. at 1356-57. In the instant case, the record is replete with examples of how Rooney was immersed in the investigation, deliberation and handling of Petitioner's case which led to his one year suspension. Mauro even testified that he relied on Rooney's reports in deciding whether to prefer charges against Petitioner. (T. 491-492).

It is also noteworthy that Respondent told Petitioner before the charges were preferred that she would consider him suspect anytime one of his students sustained an injury. (E. 228). Thus, there was an ample basis for the jury to find Rooney liable.

IV. BOTH THE SECOND CIRCUIT AND ROONEY MISSTATE THE SCOPE AND NATURE OF ROONEY'S ACTIONS AS TO NARROWLY DEFINE HER ROLE IN THE ACTIONS WHICH LED TO THE DEPRIVATION OF PETITIONER'S CONSTITUTIONAL RIGHTS.

Rooney conveniently defines the extent of her involvement for purposes of causation analysis as reporting Petitioner's "altercation with Alex", Opposition, p. 12, and that she was mandated to do this pursuant to Commissioner of Education requirements, 8 NYCCR 100.2(1)(3)(ii).

Respondent deliberately stops short in detailing her involvement in the actions which led to the violation of Petitioner's Equal Protection Rights. Rooney's involvement in this case continued after the reporting of the incident. She met with the union representative, which clearly was not required by any regulation. (T. 134, 138-139). She had the Assistant Principal take pictures of Alex's neck to be used later, which was not required by any Commissioner of Education regulation. (T. 1687). These pictures were introduced at Petitioner's disciplinary hearing. Assistant Principal Lloyd testified at the hearing that this was the first time he had taken pictures of a student. (T. 1713). She rounded up the student witnesses for Fasullo to speak to in his investigation, and gave Fasullo student statements, which was not a requirement of the Commissioner's Regulations. (T. 1854). She attended several planning meetings with Central Administration, which was unusual and not a requirement. (T. 539-540). Mauro the Superintendent of Schools testified that he relied heavily upon Rooney's recommendation and reports in reaching a decision to prefer charges against Petitioner. (T. 491-492).

Thus, it is a misrepresentation for Rooney to state her only involvement as reporting the incident and using that misrepresentation to leap to the insupportable conclusion that she was not the proximate cause of Petitioner's injury.

V. THE JURY PROPERLY DETERMINED THAT THERE WERE NO INTERVENING ACTS WHICH OPERATED TO RELIEVE ROONEY OF LIABILITY.

This Court's decision in *Milwaukee and St. Paul Railway Company v. Kellogg*, 94 U.S. 469 (1877) acknowledged that the primary cause may be the proximate cause even though it may operate through successive instruments, as an article at the end of a chain may be removed by a force applied to the other end, that force being the proximate cause of the movement. This Court went on to pose the relevant question as: Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new independent cause intervening between the wrong and the injury? *Id.* at 475.

Thus, issues of proximate causation and superseding cause involve the application of fact to law and is best left to the factfinder. *Exxon, supra* at 1819. The jury properly determined that in light of Rooney's continued involvement there was no break in the causal chain.

VI. THE SECOND CIRCUIT AND RESPONDENT IMPROPERLY ASSERT THAT CAUSATION IS A MATTER OF LAW.

The issue of causation was properly placed before the jury and the Second Circuit acted improperly when it determined as a matter of law, that Rooney could not be the proximate cause. In reaching this insupportable conclusion, the Second Circuit ignored all the precedent of this Court which recognizes that issues of proximate cause and superseding cause as best determined by the trier of fact. *Exxon, supra* at 1818.

Also, as aptly noted in *Springer, supra* at 876, "not only ordinary fact questions, but also evaluative applications of legal standards (such as the legal concept of foreseeability) to the facts" are proper jury questions. Even Respondent questions the Second Circuit's reliance on *City of Springfield v. Kibbe*, 480 U.S. 257, 269, 107 S. Ct. 1114, 1120-21 (1987) per curiam.

The Second Circuit stated *Kibbe* for the proposition that "causation requirement of 1983 is a matter of statutory interpretation rather than of common tort law." There is no support for this conclusion in this court's per curiam decision.

This Court has spoken loudly and clearly that issues of causation are best left to the trier of fact. The Second Circuit acted in derogation of this judicial principle when it ruled as a matter of law that no reasonable jury could find that Rooney was the proximate cause of Petitioner's constitutional harm.

VII. THERE WAS A MISAPPLICATION BY THE SECOND CIRCUIT OF THE *JEFFRIES* DECISION.

Respondent fails to respond to Petitioner's arguments that the Second Circuit incorrectly applied a per se rule that causation is a matter of law to be decided by the court. *Jeffries*, *supra*, was a First Amendment case, remanded to the Second Circuit for further determination in light of this Court's decision in *Waters v. Churchill*, 511 U.S. 661 (1994) and is not controlling in this case concerning issues of causation and proximate cause.

CONCLUSION

This case presents important questions which must be resolved in terms of causation issues in civil rights cases brought under Section 1983. The court below has misapplied and misconstrued this Court's rulings on this issue. The Second Circuit's decision is also inconsistent with the rulings of other circuit court's on this issue. By granting Taylor's petition for certiorari, this Court can correct the Second Circuit's decision on the issue of causation in Section 1983 cases. By granting this petition, this Court will also clarify the standard of review of a denial of a judgement as a matter of law.

Accordingly, Charles B. Taylor respectfully requests that his petition for a writ of certiorari be granted.

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